

REMARKS/ARGUMENTS

Claims 1, 5 and 7-39 are currently pending in the application. Claims 2-3 are hereby canceled without prejudice. Claims 1-3, 5 and 7-39 were rejected in the Office Action mailed March 18, 2009 (hereinafter referred to as "Office Action").

This amendment is being submitted with a petition for a three month extension of time to extend the due date from June 18, 2009 to September 18, 2009. A credit card authorization for the required fees is being submitted herewith. The Commissioner is hereby authorized to charge any additional fees, or credit any refunds, to Chalker Flores, LLP's Deposit Account No. 50-4863.

It is believed that no other fees are due at this time. In view of the following remarks and amendments, applicants respectfully request a timely Notice of Allowance be issued in this case.

Claim Rejections under 35 U.S.C. § 102

The Office Action rejected claims 1-2, 5, 7-10, 12-15, 17-21, 25-27, 29-31 and 33-35 under 35 U.S.C. § 102(e) as being anticipated by Helweg M.W. (U.S. Patent No. 7,461,023). For anticipation, a single reference must identically disclose every element of the claimed invention. *Corning Glass Works v. Sumitomo Electric*, 9 USPQ 2d 1962, 1965 (Fed. Cir. 1989). A reference that excludes a claimed element, no matter how insubstantial or obvious, is enough to negate anticipation. *Connell v. Sears, Roebuck & Co.*, 220 USPQ 193, 198 (Fed. Cir. 1983). Applicant respectfully submits that claims 1-2, 5, 7-10, 12-15, 17-21, 25-27, 29-31 and 33-35 are not anticipated by Helweg and is, therefore, allowable under 35 U.S.C. § 102(e) for the reasons stated below.

Claims 1, 25 and 39

By determining that claims 1, 25 and 39 are anticipated by Helweg (page 2, line 20-page 4, line 15), the Office Action asserts that every element recited in claims 1, 25 and 39 is ***identically disclosed*** in Helweg. Applicant respectfully disagrees.

Helweg discloses that "[a]n investor can track the overbought or oversold state of a market across several timeframes" using a Time Spectrum Relative Valuation Grid (FIGURES 40-41). (col. 22, lines 18-39; col. 22, line 62-col. 23, line 32). The Time Valuation Grid "show[s] the most recent Value Chart price with respect to the Price Action Profiles from several different time frames." (col. 22, lines 33-39).

The Value Chart is a "volatility adjusted relative chart." (col. 7, lines 43-44). As illustrated in FIGURES 3-4, open, high, low and closing prices are converted to relative open, high, low and closing prices with respect to a moving average. (col. 6, line 40-col. 7, line 33). As illustrated in FIGURES 6-7, the relative open, high, low and closing

prices are divided by a dynamic volatility unit to yield open, high, low and closing values (not prices). (col. 7, line 34-col. 8, line 45).

The "Price Action Profile is simply a profile, or bell curve, that describes the historical behavior of a Value Chart. (col. 10, lines 3-5). "Price Action Profiles display how frequently a Value Chart has traded above, below, or in any given Value Chart sector." (col. 10, lines 5-7).

As a result, the horizontal arrows in FIGURE 40 indicate the value (relative price adjusted for volatility) at the close of the respective time period in relation to historical behavior of the values. (col. 22, line 62-col. 23, line 12).

Applicant respectfully submits that the foregoing process disclosed in Helweg is not identical to the process recited in claims 1, 25 and 39 for at least the following reasons.

First, applicant respectfully submits that Helweg does not calculate opening price trends or closing price trends. Instead, Helweg calculates values for each time interval, which are relative prices adjusted for volatility for each time period. Helweg also calculates a historical behavior of the values in a bell curve format. *As a result, applicant respectfully submits that Helweg's calculated values and historical behavior of such values are not identical to opening price trends and closing price trends as recited in claims 1, 25 and 39, as amended.*

Second, applicant respectfully submits that Helweg does not display visual favorable/unfavorable trade indicators based on a comparison of opening price trends to closing price trends. Instead, Helweg compares the calculated value (relative price adjusted for volatility) at the close of a time period to a historical behavior of the calculated values. *As a result, applicant respectfully submits that Helweg's graphical indicators, as shown in FIGURES 40-41, are not identical to visual favorable/unfavorable trade indicators based on a comparison of opening price trends to closing price trends as recited in claims 1, 25 and 39, as amended.*

Third, applicant respectfully submits that Helweg does not display visual favorable/unfavorable trade indicators. Instead, Helweg discloses momentum indicators which show which direction the current calculated value (relative price adjusted for volatility) is moving with respect to a historical behavior of the calculated values. *As a result, applicant respectfully submits that Helweg's momentum indicators, as shown in FIGURES 40-41, are not identical to visual favorable/unfavorable trade indicators as recited in claims 1, 25 and 39, as amended.*

For at least the foregoing reasons, applicant respectfully submits that claims 1, 25 and 39, as amended, are allowable under 35 U.S.C. § 102(e) because *Helweg does not identically disclose each and every element* recited in claim 1, 25 and 39, as amended.

Accordingly, applicant respectfully submits that claims 1, 25 and 39 are not anticipated by Helweg and are, therefore, allowable under 35 U.S.C. § 102(e). Applicant respectfully requests that any rejection of claims 1, 25 and 39 be withdrawn.

Claims 5, 7-10, 12-15, 17-21, 26-27, 29-31 and 33-35

Applicant respectfully submits that claims 5, 7-10, 12-15, 17-21, 26-27, 29-31 and 33-35 depend from claims 1 and 25 which are allowable for the reasons stated above, and further distinguish over the cited references. Claims 5, 7-10, 12-15, 17-21, 26-27, 29-31 and 33-35 are, therefore, allowable under 35 U.S.C. § 102(e). Accordingly, applicant respectfully requests that the rejection of claims 5, 7-10, 12-15, 17-21, 26-27, 29-31 and 33-35 be withdrawn.

Claim Rejection under 35 U.S.C. § 103(a)

Claim 3 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Helweg and further in view of Kam K (Patent Application Publication No. 2001/0042037). Claims 11 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Helweg and further in view of Olsen (Patent Application Publication No. 2002/018134). Claims 16 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Helweg and further in view of Lee Andre S (Patent Application Publication No. 2005/0187866). Claims 23, 24, 37 and 38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Helweg and further in view of Friesen R. W. et al. (U.S. Patent No. 6,993,504). Applicant respectfully submits that claims 1, 5 and 7-39, as amended, are patentable over the cited references for at least the reasons described below.

Claims 1, 25 and 39

First, applicant respectfully submits that Helweg does not calculate opening price trends or closing price trends. Instead, Helweg calculates values for each time interval, which are relative prices adjusted for volatility for each time period. Helweg also calculates a historical behavior of the values in a bell curve format. As a result, applicant respectfully submits that Helweg's calculated values and historical behavior of such values do not disclose, teach or suggest calculating opening price trends and closing price trends as recited in claims 1, 25 and 39, as amended.

Second, applicant respectfully submits that Helweg does not display visual favorable/unfavorable trade indicators based on a comparison of opening price trends to closing price trends. Instead, Helweg compares the calculated value (relative price adjusted for volatility) at the close of a time period to a historical behavior of the calculated values. As a result, applicant respectfully submits that Helweg's graphical indicators, as shown in FIGURES 40-41, do not disclose, teach or suggest visual favorable/unfavorable trade indicators based on a comparison of opening price trends to closing price trends as recited in claims 1, 25 and 39, as amended.

Third, applicant respectfully submits that Helweg does not display visual favorable/unfavorable trade indicators. Instead, Heweg discloses momentum indicators which show which direction the current calculated value (relative price adjusted for volatility) is moving with respect to a historical behavior of the calculated values. As a result, applicant respectfully submits that Helweg's momentum indicators, as shown in FIGURES 40-41, do not disclose, teach or suggest visual favorable/unfavorable trade indicators as recited in claims 1, 25 and 39, as amended.

Fourth, applicant respectfully submits that a person skilled in the art would not look to Helweg and modify the invention in Helweg or combine it with other references to use opening value trends, closing value trends, and visual favorable/unfavorable trade indicators based on a comparison of opening price trends to closing price trends because Helweg teaches that using price data is unreliable:

Traditional price charts, however, are not effective in identifying relative value. In hindsight we can identify overbought and oversold price levels but they are all but impossible to identify real-time using traditional bar charts. (col. 2, lines 63-67).

Although traditional bar charts are useful for referencing the historical and current price activity of a market, we need to have the ability to chart price in a new way so that they can clearly identify relative overbought and oversold price levels. In other words, we need to chart price bars on a relative basis instead of an absolute basis. (col. 6, lines 24-29).

The relative price chart clearly did not adjust to changing volatility conditions and therefore was of little value because we want the relative chart to be able to define how far away from the zero line we should typically expect the relative price bars to deviate. Because the expected deviation from the zero line is always changing with market volatility, relative charts will not be effective in defining overbought and oversold relative price levels. (col. 7, lines 26-33).

In order for a relative chart to be more useful in identifying overbought and oversold price levels, it is desirable in the preferred embodiment to have the ability to adapt to changing market volatility. (col. 7, lines 34-37).

Applicant respectfully submits that modifying Helweg to perform the functions recited in claims 1, 25 and 39, as amended, would render Helweg unsatisfactory for its intended purpose. As a result and in accordance with MPEP § 2143.01(V), applicant respectfully submits that "there is no suggestion or motivation to [modify]" Helweg to perform the functions recited in claims 1, 25 and 39, as amended. In addition, applicant respectfully submits that modifying Helweg or combining Helweg with other references to perform

the functions recited in claims 1, 25 and 39, as amended, would change the principle of operation of Helweg. As a result and in accordance with MPEP § 2143.01(VI), applicant respectfully submits that “the teachings of the references are not sufficient to render the claims *prima facie* obvious.”

For at least the reasons stated above, applicant respectfully submits that Helweg and the other cited references, either alone or in combination, do not disclose, teach or suggest every element recited in claims 1, 25 and 39, as amended. Accordingly, applicant respectfully submits that claims 1, 25 and 39, as amended, are not obvious over the cited references and are, therefore, allowable under 35 U.S.C. § 103(a). Applicant respectfully requests that the rejection of claims 1, 25 and 39, as amended, be withdrawn.

Claims 5, 7-24 and 26-38

Applicant respectfully submits that claims 5, 7-24 and 26-38 depend from claims 1 and 25 which are allowable for the reasons stated above, and further distinguish over the cited references. Claims 5, 7-24 and 26-38 are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that any rejection of claims 5, 7-24 and 26-38 be withdrawn.

Conclusion

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the rejections. Applicant submits that claims 1, 5 and 7-39, as amended, are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,

CHALKER FLORES, LLP

By 

Daniel J. Chalker

Reg. No. 40,552

Tel.: (214) 866-0001

Fax: (214) 866-0010

2711 LBJ Frwy, Suite 1036
Dallas, Texas 75234